

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2134 of 1988
WITH
SPECIAL CIVIL APPLICATION No 3079 of 1991
AND
SP. CIVIL APPLICATIONS No 5093 & 5094 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NAGJIBHAI BHIMJIBHAI SHAIKH & ANR.

Versus

PRESIDENT, GARIADHAR NAGAR PANCHAYAT & ORS.

Appearance:

In Sp. Civil Application No 2134 of 1988
None present for Petitioners
MR HL JANI for Respondents

In Sp. Civil Applications No 3079, 5093 & 5094 of 1991
MR BI MEHTA for Petitioner
MR HL JANI for Respondent No.1
None present for Respondents No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/05/97

C.A.V. JUDGEMENT

1. All these Special Civil Applications have arisen from the same facts and grounds of challenge to the action of the respondents and I consider it to be appropriate to decide all these Special Civil Applications by this common order.

2. Except in Special Civil Application No. 2134 of 1988, in all other Special Civil Applications, the reply has been filed.

SPECIAL CIVIL APPLICATION No 2134 of 1988

3. There are two petitioners in this Special Civil Application. The petitioner No.1 was appointed as a Driver on 5-4-1956 in Gariadhar District Municipality, then under the State of Saurashtra. The petitioner No.2 was appointed as a Sweeper on 1-11-1950 in the same Municipality. The appointments of both the petitioners were made under the provisions of the Bombay District Municipal Act, 1901. Thereafter, on 1-4-1963, the Gariadhar District Municipality became Gariadhar Gram Panchayat under the provisions of Section 307 of the Gujarat Panchayats Act, 1961. Both the petitioners retired from the service on 30th June, 1976 and 30th June, 1975 respectively. The day on which both the petitioners retired, there was no rule providing for retirement age. The employees went out of service if they died and in other cases, when an employee's health did not permit him to carry out his duties, he resigned or sought voluntary retirement. It is a case of the petitioners that as they advanced in age they were unable to fulfil their duties, hence, they retired voluntarily from the services on the aforesaid dates. They were not given any pension at that time because there was no such scheme or law or rule applicable to them. However, they were the members of the Contributory Provident Fund scheme which they availed of.

4. The respondent No.3, the State of Gujarat, after decision of this Court which has been affirmed by the Supreme Court in the case of employees of different Panchayats decided to give benefit of pension scheme to the Panchayat employees vide Government Resolution No. NPM-1083-1330 dated 17th October, 1983. To avail the benefit of the pension scheme under the aforesaid resolution, the concerned employee was required to return the employer's contribution made to the Contributory Provident Fund with interest. In the case of employee who wanted to avail of the pension scheme, but was unable to return the amount of the Contributory Provident Fund,

the same was to be recovered from the amount of the pension to be given to the employee concerned. The modus-operandi after the aforesaid resolution has been decided by the Government under its resolution dated 23rd April, 1985. The petitioners submitted their application on 21st March, 1987 to the third respondent for giving them the pension. The first respondent also corresponded with the respondents No.2 and 3 regarding the issue in question. The demand of pension of the petitioners was rejected by the respondent No.3 on 31st July, 1987. The claim has been rejected on the ground that the petitioners sought voluntary retirement. Hence, this Special Civil Application by the petitioners before this Court.

5. After filing of this Special Civil Application, another resolution of the respondent No.3 dated 15th December, 1988, has come into force. This resolution has been made on the representation made by the employees who have resigned from the services after 11-2-1969 and before attaining the age of superannuation. The claim of such employees was accepted as it comes out from the resolution dated 15th December, 1988, where the reference is of the letter dated 4th February, 1987. A copy of this resolution is on the record of this Special Civil Application.

SPECIAL CIVIL APPLICATION No 3079 of 1991

6. The petitioner was appointed on the post of Clerk on 25-1-1951 in the erstwhile Mehmabad Municipality which was converted into Nagar Panchayat with effect from 1-4-1963, and the petitioner was allocated to the Mehmabad Nagar Panchayat on the same post. He was promoted to the post of Secretary on 1-11-1977 and he confirmed on the said post on 1-9-1978. Under the letter dated 1-3-1980, the petitioner requested to voluntarily resign from the services with all service benefits, and he voluntarily resigned from the services with effect from 31st August, 1980.

7. After the resolution dated 15th December, 1988, the pensionary benefits were extended to the employees of the erstwhile Municipalities who were in continuous service without any break on 11-2-1969 and who have resigned from services.

8. The petitioner submitted a representation for giving him the benefit of pension. In the representation, the petitioner stated that he opts for the pensionary benefit and also stated that 50% of the

Contributory Provident Fund which is required to be deposited by him, may be deducted from the amount of arrears of pension payable to him.

9. The Mehmabad Nagar Panchayat addressed a letter dated 17th February, 1990, to the Accounts Officer, Kheda District Panchayat, Nadiad, in which the entire facts of the case of the petitioner were stated. The petitioner had served for 30 years and he was stated to be eligible to get the pensionary benefits as per the provisions of the resolution dated 15th December, 1988. The Accounts Officer addressed a letter dated 17-9-1990 to the Mehmabad Nagar Panchayat stating therein that in case of the employee where the age limit of retirement is not prescribed and due to weakness and due to old age, the employee submits resignation in that case, the employee is eligible to get pensionary benefits. The petitioner's claim for pension has been declined by giving the aforesaid reason. The petitioner then made a representation to the Secretary, Panchayat, Rural and Housing Department and has given out therein all the facts and requested for giving him the pensionary benefits pursuant to the resolution dated 15th December, 1988. The Mehmabad Nagar Panchayat vide its letter dated 17-1-1991 addressed to the District Development Officer reiterated that the petitioner is eligible to get the pensionary benefits under the resolution dated 15th December, 1988. The Panchayat, Rural and Housing Department under its letter dated 19-3-1991 informed the petitioner that pursuant to the resolution dated 15th December, 1988, the petitioner is not eligible to get the pensionary benefits. Hence, this Special Civil Application.

SPECIAL CIVIL APPLICATION No 5093 of 1991

10. The petitioner was appointed on the post of Keyman of Water Works in Bhadran Municipality in the year 1950 which was converted into Gram Panchayat on 1-4-1963. The petitioner was allocated to Bhadran Gram Panchayat. The post of Keyman was permanent post and the age of retirement of the said post was 58 years. In or about March, 1978, the petitioner was transferred at Drainage Pumping Station. The petitioner was not keeping well. The duties and responsibilities attached at Drainage Pumping Station were hazardous. Due to ill health, the petitioner submitted his resignation to Sarpanch, Bhadran Gram Panchayat on 18-11-1978. The petitioner was in service on 11-2-1969, and as such, he is entitled for the pension under the resolution dated 15th December, 1988, but despite of his representation, those benefits were

not extended to him and his claim was rejected on the ground that he had not tendered his resignation on the ground of his ill health. Hence, this Special Civil Application.

SPECIAL CIVIL APPLICATION No 5094 of 1991

11. The petitioner was appointed on the post of Accountant on 1-3-1952 in Bhadran Municipality which was converted to Bhadran Gram Panchayat on 1-4-1963, and the petitioner was allocated to the Gram Panchayat. He was discharged from service under the order dated 24th January, 1973. He approached to the Taluka Development Officer against the discharge order and that order was stayed by the said officer. The final order came to be made on 16th April, 1973, in favour of the petitioner. The Bhadran Gram Panchayat preferred an appeal to the District Development Officer, which came to be rejected on 16-6-1973. The Panchayat preferred a revision application before the Development Commissioner which was also dismissed on 24th July, 1973. The review application has been filed by the Gram Panchayat, but that came to be dismissed on 23rd November, 1973. The Panchayat filed Special Civil Application No.1788/73 before this Court. This Court declined to grant any stay order in favour of the Gram Panchayat. The Sarpanch of the Gram Panchayat gave a chargesheet to the petitioner and thereafter he was dismissed from the services. This time the petitioner has come up before this Court by filing Special Civil Application No.2102/75. A consent order was passed by this Court in both the aforesaid Special Civil Applications. As per the consent term, the petitioner resigned from service on 28th July, 1977. As it was a case of resignation of the petitioner from services, after the resolution dated 15th December, 1988, he made a claim for pension, but that was not accepted. Hence, this Special Civil Application.

12. In the reply, the respondent-State has given out that the provisions of the resolution dated 15th December, 1988 are applicable to those employees who had after putting in required minimum qualifying service for voluntary retirement, resigned from service due to weakness occurred on account of old age and for whom no age for superannuation was prescribed in their cases by the concerned Municipalities/Panchayats. It has further been stated that the petitioner has not resigned from service due to weakness on account of old age as provided in the said resolution, but he resigned from the services due to some other reasons, and as such, he is not entitled for the pension. In all the three matters,

identical reply has been given. So the defence of the respondent in the reply is that only those employees who were in service on 11-2-1969 and have resigned from service after putting in the requisite number of years of service prescribed for qualifying for voluntary retirement, and have resigned due to inability/weakness being caused by age, are entitled for the pensionary benefits. From one of the Special Civil Applications it comes out that the qualifying period for voluntary retirement has been taken to be 25 years. So in the case of the petitioner in Special Civil Application No.5094/91 where his services were of 23 years, that point is taken, but in the case of other petitioners in Sp. Civil Applications No.3079/91 and 5093/91, the services to the credit of the petitioners therein were of more than 25 years. In the case of petitioner in other Special Civil Application his services were of less than 25 years.

13. The learned counsel for the petitioners contended that the cases of the petitioners fall under Clause-3(1) of the resolution dated 15th December, 1988. It has next been contended that the provisions of the resolution dated 15th December, 1988 have not been correctly construed. It has next been contended that there was no provision for voluntary retirement in the rules of Municipalities which were converted into Nagar Panchayats. Lastly, it has been contended that in the cases of all the petitioners except the petitioners in Special Civil Application No.2134/88, the age of retirement was prescribed in the rules, and as such, Clause (2) of Para No.3 of the resolution dated 15th December, 1988, is not attracted in their cases.

14. On the other hand, the counsel for the respondent contended that the petitioners who have resigned voluntarily from the services are not entitled for the benefit of the pension as they have not resigned from the service due to inability or weakness being caused by age. They have resigned from services for other reasons. It has next been contended that these benefits are available only to those employees who have resigned from the services after completing the qualifying services prescribed for voluntary retirement.

15. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

16. The only question in this case is of interpretation of the resolution dated 15th December, 1988. A translation copy of this resolution has been furnished by the counsel for the petitioners, and the

counsel for the respondent when asked by the Court has accepted that it is true and correct translation of the document. The Government admittedly passed the resolution dated 17th October, 1983, making applicable the pension scheme of the Government to the original employees of the Municipalities converted into Gram/Nagar Panchayats under sec.307 of the Gujarat Panchayats Act, 1961, and who are continued in service on 11-2-1969 after conversion of the Municipalities into Gram/Nagar Panchayats and retired and died thereafter. This resolution has been passed pursuant to the decision given by the Apex Court in the case of State of Gujarat and others vs. Shri R.K. Soni. A representation came to be made by the other class of the employees of the Municipalities converted into Gram/Nagar Panchayats who were in continuous service on 11-2-1969 and they have resigned from the service before the date of retirement. The claim of this class of persons for pension was not accepted under the letter dated 4-2-1987. The matter was reconsidered and the State Government has decided to give the benefit of the resolution dated 17th October, 1983 subject to the conditions contained therein.

17. The first condition is that the benefit shall be given to full time employees of old Municipality who are continued in service without any break on 11-2-1969 in converted Gram/Nagar Panchayat and have given resignation thereafter. This condition contemplates the following conditions for eligibility and entitlement for the pensionary benefits, namely, (1) the employee should be full time employee of the Municipality, (2) he continued in service without any break on 11-2-1969 in the converted Gram/Nagar Panchayat, and (3) has given the resignation after 11-2-1969.

18. The respondents have not disputed that all the petitioners in these Special civil Applications were full time employees of the old Municipalities and they were continued in service without any break on 11-2-1969 in the converted Gram/Nagar Panchayats and they have resigned after the said date. I do not find any substance in the contention of the counsel for the petitioners that the condition No.1 should be read in isolation and their cases should be decided with reference to that condition. The condition No.1 has to be read with condition No.2 and the eligibility and the entitlement for the pension could have been only in the case of those employees in whose rules of service, the age of retirement was not fixed and they were required to give resignation from services or retired from services due to inability/weakness being caused by age. So in

addition to condition No.1 this class of employees have to fulfil the requirement of condition No.2. So the scheme of resolution dated 15th December, 1988 is that the benefit of pension is only applicable to those employees of the old Municipalities who are continued in service without any break on 11-2-1969 in the converted Gram/Nagar Panchayats and in whose case, in the rules of service, the age of retirement is not fixed and they were required to give resignation from service or retired from the service due to inability/weakness being caused by the age. In all these cases, the petitioners have resigned from the services. Except in the case of the petitioners in Special Civil Application No.2134/88, in all other writ petitions, the petitioners have come up with a case that under the relevant rules of service conditions, the age of retirement was fixed as 58 years.

19. The resolution dated 15th December, 1988, nowhere provides that in the case of the employees of the old Municipalities who were continued in service without any break on 11-2-1969 and in their cases the rules of the service conditions prescribe the age of retirement will not get any pensionary benefits though they have resigned after 11-2-1969 on any ground whatsoever. A conjoint reading of conditions No.1 and 2 leaves no doubt in the mind of the Court that in the case of the employees of the old Municipalities which were converted into Gram and Nagar Panchayats and who fulfilled other conditions and in the rules of service conditions the age of retirement was fixed, on their resignation they shall be entitled for the pension. The respondents in these Special Civil Applications except in Special Civil Application No.2134/88 have not disputed the averments made by the petitioners therein that the age of superannuation was prescribed in their cases. In the Special Civil Application No.2134/88, the reply has not been filed, but there the case of the petitioners is that in their cases the age of superannuation was not prescribed. The petitioners in the Special Civil Application No.2134/88 have to their credit on the date of resignation of the service, the service of more than 20 years in one case and more than 24 years in other case. The petitioners have averred in the Special Civil Application that they have resigned from the services as they were unable to do the work. In Para No.2 of the Special Civil Application the statement has been made that as they advanced in age they were unable to fulfil their duties, hence they retired voluntarily. These averments have not been controverted by any of the respondents by filing the reply to this Special Civil Application. In the case of the petitioners in this case both the conditions No.1 and

2 are fulfilled, and as such, the denial of the pension to these persons by the respondents is wholly unjustified.

20. The contention of the counsel for the respondents that only those employees were entitled for pension who have completed the qualifying service prescribed for voluntary retirement and who have to their credit the qualifying service for voluntary retirement on the date of their resignation were entitled for pension under the resolution dated 15th December, 1988, it is suffice to say that this contention is not acceptable. Under the resolution dated 15th December, 1988, for the entitlement of pensionary benefits, the condition of qualifying service prescribed for voluntary retirement is not an eligibility prescribed for entitlement. For the entitlement, what is required is that the employee concern should be full time employee in the old Municipality and who continued in the service without any break on 11-2-1969 in the converted Gram/Nagar Panchayat and has given resignation from service due to inability/weakness caused by age or he was asked to retire from services by the employer due to inability/weakness being caused by age. However, for the entitlement of the pension, minimum 10 years qualifying service has to be there to the credit of the employee concerned. So to that extent, the provisions can be imported in this resolution, but not the provision of the qualifying service prescribed for the voluntary retirement for an employee.

21. The matter can be viewed from another angle. The counsel for the respondents is unable to point out any provision of the voluntary retirement under the relevant service rules of the erstwhile Municipalities which were converted into Gram/Nagar Panchayat. The matter would have been different where the provision for voluntary retirement would have been there in the service rules of the respective Municipalities and then it would have been taken to be a case of simplicitor resignation. In the absence of any such provision in the service rules of the concerned Municipalities converted into Gram/nagar Panchayats, this contention raised by the learned counsel for the respondents cannot be accepted. Moreover, something cannot be read in the resolution dated 15th December, 1988, which otherwise was not intended by the authority who made the said resolution.

22. In the case of other three petitioners, as stated earlier, the respondents have not disputed in the reply that in the relevant service rules of the Municipalities

concerned, the age of retirement was prescribed. Apart from this in the case of Special Civil Application No.3079/91 and 5093/91, the petitioners therein were having to their credit more than 25 years of service on the date on which they resigned from the services. So the denial of pension to them under the resolution dated 15th December, 1981 does not stand to any rationality or logic. Otherwise also, as they have resigned from the services after fulfilling the qualifying service of more than 25 years, which was as per the case of the respondents has to be fulfilled, they were entitled for the pension. In the case of these two petitioners, the defence has been taken that they have not resigned from services due to inability or weakness being caused by age. The respondents cannot have both head and tail. In case, if we go strictly by the resolution then in the case of these petitioners as retirement age has been fixed their case will fall in Clause (3) and they will be entitled for the benefit of pension, however, subject to the fulfillment of 10 years qualifying service which is the minimum qualifying service prescribed under the relevant pension rules, and if we go by the defence taken by the respondents then they have to their credit more than 25 years. In case the resignation has to be given only on the ground of inability/weakness caused due to age then in no case the employees of the erstwhile Municipalities converted into Gram/Nagar Panchayats who were in full time service and continued in service on 11-2-1969 and thereafter resigned from services would be entitled for the pension. So if the resolution dated 15th December, 1988 is interpreted in the way in which it is sought to be interpreted by the counsel for the respondents then it will become nugatory or will be the resolution confirming the pensionary benefits only on papers and not in reality. The rule of interpretation is well-established that the interpretation should be given to a statute, here is a resolution, to fulfil its object and purpose and not to defeat the same.

23. The resolution dated 17th October, 1983, is useful to be referred here. Under the said resolution, the pensionary benefits shall accrue to the full time employees of the erstwhile Municipalities who were in service on 11-2-1969 and have retired or died after that date. The pensionable pay and qualifying service for pension shall be on the lines similar to those applicable to the employees of District and Taluka Panchayats. It has further been provided that if any employee has remained in service beyond the age fixed for the normal superannuation, the period beyond the date of the normal superannuation shall be construed as reemployment. So

the entitlement of the pensionary benefits under the resolution dated 17th October, 1983 is available to all full time employees of the erstwhile Municipalities who were in service on 11-2-1969 and have retired or died after that date. So in case the petitioners would not have resigned from the services before 17th October, 1983 then they would have been entitled for the pensionary benefits or in case they would have retired after 11-2-1969 then irrespective of the fact that whether they have 30 years service or 25 years service or not they would have been entitled for the pension. However, the qualifying service of pension shall be on the lines similar to those applicable to the employees of District and Taluka Panchayats. It is not in dispute that the qualifying service for pension is 10 years. The resolution dated 17th October, 1983, nowhere provides that in case any employee of the category would have retired after 11-2-1969 though he would not have completed 25 years service will not be entitled for the pension. So the import of the required condition of fulfilling the qualifying service of voluntary retirement for entitlement of the benefit of pension under the resolution dated 15th December, 1988 is not called for and nor it was intended to be by the said resolution making authority. These two resolutions should be harmoniously construed and if we go by that then in case of employees of the erstwhile Municipalities who have resigned from the services after 11-2-1969 though they fulfil other conditions also and in their case the age of superannuation was there in the service rules they have been placed at par with the employees who have retired or died after 11-2-1969. The only hurdle is that they must have to their credit the minimum qualifying service for pension and in none of the case, the petitioners are lacking the minimum qualifying services prescribed for the pension i.e. 10 years. All the petitioners were having sufficiently long services to their credit on the day on which they resigned from the services. Except in the case of one of the petitioners, the other petitioners were having the services of more than 25 years to their credit on the day on which they submitted their resignation. So if the defence of the respondents is accepted then only those persons who are having the services of 25 years to their credit could have been extended the benefit of pension, but there is nothing on record to justify their claim even not to extend the benefit of the pension to this class of persons.

24. Reference may have to a recent decision of the Hon'ble Supreme Court in the case of Union of India vs. Lt. Col. P.S. Bhargava reported in 1997 (2) SCC 28.

That was also a case of resignation of an Army Officer from the services, but the Hon'ble Supreme Court has held that the voluntary resignation does not automatically disentitle the Army Officer of the terminal benefits. In that case, the resignation of the respondent from the services was accepted, but a condition has been imposed that he shall not be entitled for the gratuity, pension, leave pending resignation and travel concession. This condition gave a cause to the respondent, therein, to file the Special Civil Application in the Assam High Court and ultimately, the matter has been taken up to the Supreme Court. The counsel for the respondents is unable to produce on the record any rule or regulation which disentitle such class of persons from getting the pensionary benefits.

25. Taking into consideration the totality of the facts of this case, the action of the respondents to deny the pension to the petitioners is wholly arbitrary and unjustified.

26. In the result, all these Special Civil Applications succeed and the same are allowed. It is hereby declared that the petitioners are entitled for the pensionary benefits under the resolution dated 15th December, 1988. The respondents are directed to undertake the matter of fixation of the pension and other retirement benefits of the petitioners under the resolution dated 15th December, 1988 and complete that exercise within a period of six months from the date of receipt of certified copy of this order. The arrears of pension and other retirement benefits should be paid to the petitioners within a period of two months next thereafter. The petitioners shall thereafter be paid the pension regularly. It is further made clear that whatever subsequent revisions have been made in the amount of pension etc. should be given effect to also in the case of the petitioners. Rule is made absolute in the aforesaid terms with no order as to costs.

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